

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
MITRE SPORTS INTERNATIONAL LIMITED, :

Plaintiff, :

v. :

HOME BOX OFFICE, INC., :

Defendant. :

**Case No. 08 CIV 9117 (GBD) (HBP)**

-----X  
**MITRE'S BRIEF IN SUPPORT OF PARTIAL SUMMARY JUDGMENT  
THAT HBO DEFAMED MITRE**

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UNDER PROTECTIVE ORDER**

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## **INTRODUCTION**

Plaintiff Mitre Sports International Limited (“Mitre”) hereby moves for partial summary judgment, pursuant to Federal Rule of Civil Procedure 56, that the distribution of “Real Sports With Bryant Gumbel Episode #138” by Defendant Home Box Office, Inc. (“HBO”), to a portion of which HBO sometimes—and hereinafter this brief—refers as “Children of Industry,” defamed Plaintiff Mitre Sports International Limited (“Mitre”) by falsely portraying that Mitre employs child labor in the manufacture of Mitre soccer balls in the city of Jalandhar, India.

On October 6, 2009, Mitre moved for partial summary judgment that “Children of Industry” (hereinafter “COI”) defamed Mitre by falsely portraying that Mitre and its manufacturers in India engage in the monstrous practice of employing child slave labor in the manufacture of Mitre soccer balls in the city of Meerut, India. The basis for Mitre’s motion was that HBO admitted in this litigation that it found no Mitre products of any kind being manufactured in Meerut with child labor or child slave labor, let alone soccer balls. In fact, no Mitre balls are made in Meerut. The Court denied Mitre’s motion by order of December 14, 2010, finding a triable issue over COI’s statements concerning Meerut. Dkt Entry 179 at 4.

Mitre now moves for partial summary judgment that COI defamed Mitre by falsely portraying that Mitre engages in the also monstrous act of employing child labor in Jalandhar, India. The evidence that COI was false and a hoax—and that HBO knew COI was false—comes from HBO’s own research files and from the testimony of the HBO employees who researched and produced the show and others who appeared in it: the Producer, Joseph Perskie; the Associate Producer, Zehra Mamdani; the host, Bryant Gumbel; the investigative correspondent, Bernard Goldberg; the people interviewed by Goldberg in the show; and the children depicted in the show stitching Mitre soccer balls.

This evidence shows that HBO knew, from the time it conceived COI in 2006 through September 2008, that neither Mitre nor Mitre's soccer ball manufacturers in India employed child labor. HBO knew that Mitre's manufacturers employ adults. Because the stitchers are mostly women, they work at home. What sometimes happens is that these adults will give soccer balls to their own children to stitch at home because of economic necessity. A November 2006 Zehra Mamdani document acknowledged, contrary to COI's portrayal of children delivering soccer balls to their "masters": "In football stitching . . . we can't really show abused kids because these kids are not being beaten by their 'masters;' they're being slapped by their parents for not working . . . ." 56.1 Stmt ¶ 27. The Indian journalist contracted by HBO who Producer Joseph Perskie said "did very precise, very careful, very thorough work," told HBO: "As I have explained and mailed you earlier . . . Parents/ Family members makes children to stitch the balls [sic] . . . ." *Id.* ¶¶ 28 – 30.

HBO also learned that Mitre's soccer ball manufacturers since 1998 have had in place a comprehensive system—developed in conjunction with the Indian federal government, the United Nations, FIFA, and other international organizations—to: (1) find instances where parents give their children balls to stitch; (2) counsel the parents that they should not do so and instead should focus on the children's education; (3) enroll children in school if they were not already attending; (4) establish schools for such children; (5) provide adult education so that parents could obtain higher-paying jobs; and (6) set-up microfinancing so that the parents could avoid high-interest loans. HBO learned from its interview with Charlotte Ponticelli, shown in COI, that such programs were also employed by the U.S. government and had proven effective in changing parents' attitudes and behaviors when it came to their children's education.

HBO, however, hid these facts from viewers. The portion of the Ponticelli interview shown in COI was doctored to delete references to the success of governmental and soccer company programs to prevent and rehabilitate child labor. HBO knew that inclusion of these facts in COI would give the lie to the core message of the show: child labor in the production of soccer balls in India is so widespread and so easy to find that Mitre and its manufacturers falsely deny its existence (they do not—another falsity of COI) in order to hide their practice of employing cheap child labor.

Finally, the parties took the testimony of the families in India whose children were depicted by HBO as being child laborers stitching Mitre soccer balls. The children's and their guardians' sworn testimony is that the children are not soccer ball stitchers and that they were induced to pretend on-camera to stitch soccer balls. Their testimony was corroborated by HBO's own researcher, who testified that these scenes of children stitching Mitre soccer balls were "fabricated" and "dramatized."

### **FACTUAL BACKGROUND**

#### **A. Viewers' Understanding of "Children of Industry"**

Viewers of COI understood the show to state that Mitre engages in the criminal and heinous act of hiring and employing children to stitch Mitre soccer balls because Mitre wants to exploit these children as a cheap source of labor. Viewers sent the following e-mails to Mitre upon seeing the show.

- "You [sic] company is practicing an illegal act and hiring children in India. . . . I hope the law investigates our [sic] company and I will be writing my congressman to inform him of your wrong doing! You should be in jail, everyone of your employees!" 56.1 Stmt ¶ 4.
- "I was absolutely appalled and sickened to watch how these kids were used and treated and even more shocked to see that **Mitre** was the company that we're [sic] employing these children!!" *Id.* ¶ 5 (emphasis in original).

- “SHAME ON YOU!!!! . . . Clearly complicit in hiring children in India. YOU ARE NOTHING MORE THAN SLAVE DRIVERS!!!! . . . DON’T YOU DARE CLAIM IGNORANCE!!! ADMIT IT!” *Id.* ¶ 6.
- “You use shild [sic] labor and you know it. You are liars, slave mongers and murderers of children. You are disgusting animals who don’t deserve to be free you should all be sent to prison . . . I hope you all go to hell for eternity.” *Id.* ¶ 7.
- “I will inform my family, which consists of children who might be employed by your company if they were less fortunate. I can not believe in this day and age a company like yours, who has upheld an image as a ‘good guy’ to many of its customers, would use children to make their products for pennies a day. YOU SUCK, and may God repay you for your wicked ways.” *Id.* ¶ 8.
- “You knew you were getting your work done for pennies, and you knew you were exploiting poor people in india [sic] to make more profits. . . .” *Id.* ¶ 9.
- “Mitre’s motivation to line its pockets and rob these children of meaningful lives turns my stomach. Please take action to end this practice immediately.” *Id.* ¶ 10.
- “This is greed beyond greed. You are stealing the lives of innocent children. . . . I’d start looking for that fire retardant suit for the afterlife because the perpetrators in your company will definitely have a special place in Hell.” *Id.* ¶ 11.
- “The world saw how you exploited those poor children and you as well as Walmart will all certainly roast in hell. . . . You can not hide your eyes and say we were not aware of this. You chose not to do anything about [sic] in the name of corporate profits. May cancer eat your bones.” *Id.* ¶ 12.
- “I SAW THE SEGMENT THAT HBO REAL SPORTS RAN THAT EXPOSED YOU FOR EXPLOITING CHILDREN FOR PROFIT.” *Id.* ¶ 13.
- “MITRE uses India [sic] child labor to make the balls . . . your greed is disgusting.” *Id.* ¶ 14.
- “I just saw the television expose on your use of child slave labor in India. Your policies are shameful and barbaric.” *Id.* ¶ 15.
- “Absolutely abominable that you are using the world [sic] poorest, underprivileged children to make soccer balls for the affluent.” *Id.* ¶ 16.

These e-mails also prove that COI ascribed, to Mitre, use of child *slave* labor in Meerut, India. This is because COI intentionally conflated the situation in Meerut, where the show states that child slave labor exists, with what HBO concedes is the “distinct,” “separate” situation in

Jalandhar.<sup>1</sup> HBO conflated these two cities despite finding *no* Mitre products of *any* kind being manufactured in Meerut with child labor or child slave labor. Kapoor Decl. Ex. 45 at 31.

**B. What “Children of Industry” Portrayed**

Viewers understood from COI that Mitre engaged in these monstrous acts because that is what COI falsely and intentionally stated.

As the show begins, “Real Sports” host Bryant Gumbel states, “Now, given the game’s global popularity, the balls are big business, which is why governments, manufacturers, and retailers all say they abhor the practice of child labor. Yet, clearly, they are all letting it happen. Our Bernard Goldberg has the disturbing details.” Kapoor Decl. Ex. 4 at 2:16 – 23.

COI states that these “poorest children on earth”—some “as young as six”—

spend their days crouched on dirt floors stitching soccer balls together, for pennies a day, if they’re lucky, and for nothing at all, if they’re not.

MR. SATYARTHI: They don’t go to school. They have no time to play. Even they cannot eat properly, because they have to work hard for ten, twelve, fifteen hours a day.

MR. GOLDBERG: You’re saying they have no childhood.

MR. SATYARTHI: They have no childhood. They have no freedom. They have no human dignity.

*Id.* at 2:24 – 3:24.

The description of these children is accompanied by the video of a courtyard in which many purported child stitchers are shown engaged in their craft. HBO DVD 109 at 3:40. This scene is not real, but was staged. Kapoor Decl. Ex. 19 (M.K. Hans Tr. 61:16 – 66:13 (testimony of former soccer ball stitcher and SGFI monitor)).

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<sup>1</sup> HBO Mem. Law Supp. Mot. Part. Summ. Judg., at 4-5 (Aug. 28, 2009).



The show then introduces children's rights advocate Kailash Satyarthi as someone "who has spent thirty years in his country's slums working to break a custom that in these villages goes back ages: the use of poor children as manual labor." Kapoor Decl. Ex. 4 at 3:25 – 4:10. This "custom" and these children are "part of an industry that makes over a million balls a year." *Id.* Satyarthi, however, testified that he "was not even aware that this film is being also filmed in [Jalandhar]," has "no idea of what is exactly happening" in Jalandhar, has "never been to Jalandhar in this particular or in any investigation with anyone . . . [a]nd [] had . . . never seen that any child in Jalandhar is working for a particular company." 56.1 Stmt ¶ 18 (citing Satyarthi Tr. 60:03 – 05, 104:17 – 105:16, 116:19 – 23, 223:20 – 224:10).

COI then describes "Jalandhar, India, a city built on the soccer trade, where a handful of local suppliers make balls for some of the biggest brands in the world. On paper, there are no children stitching those balls. That would be against the law. And the world's big soccer brands have policies against using child labor." Kapoor Decl. Ex. 4 at 4:23 – 5:05. Only one soccer brand is mentioned or shown in COI: Mitre. And it is mentioned or shown 24 times.

COI states that, despite laws against child labor and despite Mitre's policies, Indians continue to follow this "custom" and "the children are here, hidden in plain sight." *Id.* at 5:06 – 08. As proof, COI shows Manjeet, "an orphan who lives with her grandparents. She's also a full-time soccer ball stitcher, and she's only twelve." *Id.* at 5:08 – 11. Manjeet states, on camera, "I have no choice but to work. I can't go to school. I have to work because my grandparents are very old and we are very poor." *Id.* at 5:12 – 15. Manjeet was deposed and gave uncontradicted testimony that she is not a soccer ball stitcher and her guardians are actually her gainfully employed aunt and uncle. 56.1 Stmt ¶ 19 (citing Manjeet Kaur Tr. 27:14 – 22, 11:13 – 14:20). She testified that she was induced to pretend to stitch a Mitre ball on-camera by

the promise of money. *Id.* ¶ 20 (citing Manjeet Kaur Tr. 33:21 – 34:03, 38:01 – 04, 37:05 – 38:10).

The meaning of COI, which is poignantly and powerfully conveyed using Manjeet, is that Mitre falsely denies “on paper” that children do not stitch soccer balls. The show states that HBO found this “proof” of Mitre’s alleged false denials and “proof” of this age-old industry “custom”—“in plain sight.” In other words, COI conveyed, as understood by viewers, that Mitre is a liar and is hiding its illegal employment practices.<sup>2</sup>

COI explains that “soccer ball makers in India like hiring children instead of their parents” because “[c]hildren are the cheapest source of labor. They are physically and mentally vulnerable. They cannot go on strike. They cannot form the unions. So they are docile, easy.” Kapoor Decl. Ex. 4 at 5:16 – 6:04.

COI reinforces this point that Mitre actually hires children by repeating how the children “earn” money, how they are paid “pennies a day” and “pennies an hour,” and how they cannot unionize. Kapoor Decl. Ex. 4 at 3:12, 5:16 – 18, 10:06, 16:02. The “cross talk” between host Bryant Gumbel and correspondent Bernard Goldberg concludes COI and purportedly provides Gumbel’s and Goldberg’s reactions to what they apparently have just seen along with the viewers. In reality, Gumbel and Goldberg had never watched the show seen by viewers and never watched any part of the show together, and Goldberg did not recall *ever* watching any

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<sup>2</sup> 56.1 Stmt ¶ 6 (“Clearly complicit in hiring children in India. YOU ARE NOTHING MORE THAN SLAVE DRIVERS!!!! . . . DON’T YOU DARE CLAIM IGNORANCE!!! ADMIT IT!”); *id.* ¶ 7 (“You use shild [sic] labor and you know it. You are liars, slave mongers and murderers of children.”); *id.* ¶ 12 (“The world saw how you exploited those poor children and you as well as Walmart will all certainly roast in hell. . . . You can not hide your eyes and say we were not aware of this. You chose not to do anything about [sic] in the name of corporate profits.”).

video from the show.<sup>3</sup> Goldberg states in the cross talk: “the kids are making a nickel an hour. The kids aren’t yelling to organize. The parents aren’t going to tolerate a nickel an hour, and may want to organize.” *Id.* at 25:08 – 19. Gumbel confirmed that Goldberg was stating here that “children are employed to the exclusion of adults because the labor of children is cheaper” and “children cannot organize.” 56.1 Stmt ¶ 23 (citing Gumbel Tr. 134:14 – 135:04).

The show details the physical and mental suffering imposed on these children by their employers, or “masters” as the show calls them, Kapoor Decl. Ex. 4 at 6:11 – 7:08, and then proceeds to give viewers the villain they have been seeking to blame for this exploitation of poor children: Mitre.

MR. SATYARTHI: They cannot make small mistake, otherwise they will cut their fingers, and they keep working with the injured fingers, all day. Because if they are not able to complete the work given to them, they have to be punished for that. Their money would be deducted.

MR. GOLDBERG: Money would be deducted?

MR. SATYARTHI: So, so, yeah, five cents would be deducted.

MR. GOLDBERG: Really?

MR. SATYARTHI: Something like that. But it is a big thing for them.

MR. GOLDBERG: Big for them maybe, not so much for the brands they’re stitching for. *Manjeet is making a ball for Mitre*, one of the biggest soccer brands in the world, the preferred brand of the pros.

*Id.* at 6:19 – 7:14 (emphasis added).

The show claims that Mitre, “an industry leader,” used child labor in Pakistan in the 1990s, “called a summit of the world’s biggest soccer ball makers” after this “widespread child

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<sup>3</sup> 56.1 Stmt ¶¶ 21 – 22 (citing Gumbel Tr. 34:22 – 35:21 and Goldberg Tr. 23:04 – 16, 26:06 – 28:05).

labor” was uncovered “and they all pledged to stop using child labor.” *Id.* at 7:16 – 8:04. The show thus claims that Mitre and other unnamed soccer ball makers used child labor in Pakistan in the 1990s until they got caught—further proof that Mitre is lying when it denies “on paper” that children have stitched soccer balls.

The show then refers to Mitre’s policy “requiring that child labor is not used by any of the suppliers that make Mitre balls” in Jalandhar. Satyarthi then says about Mitre’s policy, “Well, the policy is something. And practice is another.” Kapoor Decl. Ex. 4 at 8:12 – 20. COI then shows the viewer Mitre’s supposed “practice”: “We met dozens of kids making Mitre balls in Jalandhar, like the brothers Deepu and Aman.” *Id.* at 8:21 – 23.

Satyarthi, however, testified that he: has “no idea of what is exactly happening” in Jalandhar and has “never been to Jalandhar” for these purposes, 56.1 Stmt ¶ 18; and, concerning Mitre’s policies, he was “shocked” at seeing children stitching Mitre soccer balls when he saw COI because of his respect for Mitre as a company with “strong systems to make sure that child labor is not used ” and “one of the leading” organizations in the field of corporate social responsibility. 56.1 Stmt ¶ 24 (citing Satyarthi Tr. 223:20 – 224:10, 252:14 – 256:06, 262:06 – 267:21). Moreover, the scene of Deepu and Aman stitching Mitre balls was staged. Deepu’s and Aman’s uncontradicted testimony is that they had never stitched a soccer ball and that they were induced to pretend on camera that they stitched Mitre balls. 56.1 Stmt ¶ 25 (citing D. Singh Tr. 19:21 – 20:06 and A. Singh Tr. 30:08 – 12).

The show’s concluding cross talk has a “Q&A” format, with famous sports commentator Gumbel asking probing questions and with famous journalist Goldberg the purported investigator (who never went to India) attempting to satisfy Gumbel’s inquisition. The cross talk reinforces the show’s messages just seen and heard by the viewer (but not by Gumbel and

Goldberg). Gumbel's ultimate question is, "There, there are clearly lots of guilty parties here, but, but where do we, where do we assign most of the blame?" Kapoor Decl. Ex. 4 at 23:07 – 22. The cross talk then offers viewers the same "guilty party" offered 20 other times: Mitre. Although Goldberg purports to claim that it is "very hard" for "Mitre, an international company based in London," "to know what's happening on a side street in Jalandhar, India," Gumbel responds by angrily stating: "I understand that, but when they say they investigated it, are they just lousy investigators, or are they lying?" HBO DVD 109 at 22:37; Kapoor Decl. Ex. 4 at 24:01 – 13. Goldberg offers an opinion: "Well, let, let me answer it this way. I, I don't *believe* they're lying." *Id.* at 24:14 – 16 (emphasis added). But then he refutes this hypothesis:

Having said that, we're a television program. We don't have subpoena powers. We don't have guns. We don't have badges. We can't walk in and tell everybody to get their hands up on a wall. But we found it. We found it.

MR. GUMBEL [with a look of disbelief]: That's what I said. How, how good can their investigations be? How hard can they be trying?

*Id.* at 24:20 – 25:05; HBO DVD 109 at 22:37.

And indeed, viewers understood that Mitre was lying and intentionally exploits these children for profit. 56.1 Stmt ¶ 6 (echoing Gumbel: "Clearly complicit in hiring children in India. YOU ARE NOTHING MORE THAN SLAVE DRIVERS!!!! . . . DON'T YOU DARE CLAIM IGNORANCE!!! ADMIT IT!"); *id.* ¶ 7 ("You use shild [sic] labor and you know it. You are liars, slave mongers and murderers of children."); *id.* ¶ 12 ("The world saw how you exploited those poor children and you as well as Walmart will all certainly roast in hell. . . . You can not hide your eyes and say we were not aware of this. You chose not to do anything about [sic] in the name of corporate profits.").

**C. “Children of Industry” Was False—and HBO Knew It**

COI’s statements that Mitre exploits children as a source of cheap labor are false, and, as shown below, HBO knew the truth but disregarded it.

**1. HBO Knew That Neither Mitre nor Mitre’s Manufacturers Hire Children**

From the very beginning of the conception and research for COI, HBO knew that child stitching occurred because the children’s parents, who were given balls to stitch, gave some of these balls to their own children to stitch for additional income. A November 10, 2006, document from the files of Associate Producer Zehra Mamdani outlined what became COI. “The stitchers are very poor, it is common for children to work to support the family . . . .” 56.1 Stmt ¶ 27 (citing HBO007880). “In football stitching . . . we can’t really show abused kids because these kids are not being beaten by their ‘masters;’ they’re being slapped by their parents for not working . . .” *Id.* (citing HBO007881; second ellipsis in original). Nevertheless, Mamdani deemed the story “do-able, if its done in a *clever* way.” *Id.* (emphasis added).

For HBO’s research in India, HBO relied on Manpreet Kaur, whom Producer Joseph Perskie testified was the reliable Indian journalist who “did very precise, very careful, very thorough work” and whose work Mamdani testified was “accurate.” 56.1 Stmt ¶¶ 28 – 29 (citing Perskie 30(b)(6) Tr. 134:10 – 135:07 and Mamdani Tr. 466:11 - 20). Kaur informed HBO:

As I have explained and mailed you earlier there are no direct contact [sic] between company and children or between contractor and children. These balls are taken out by trusted contractors/ trusted employees outside [the factory] for stitching and are given to parents of the children to stitch.

***Parents/ Family members makes children to stitch the balls . . . .***  
[sic]

*Id.* ¶ 30 (citing HBO008163; emphasis added).<sup>4</sup>

The testimony taken in India of HBO’s “stringer” / researcher Veena Sharma corroborates and confirms Kaur’s information. HBO identified Sharma in its Initial Disclosure Statement, at pp. 2, 9, as someone whom HBO “may use to support its defenses” and who “is likely to have discoverable information regarding the research and production of the Segment, and the substantial truth of the Segment.” In the winter of 2007/2008, Mamdani tasked Sharma with conducting a survey of soccer ball stitching in the Jalandhar area. 56.1 Stmt ¶ 33.

Sharma surveyed 10 to 12 areas around Jalandhar over the course of 1- 1.5 months, interviewing at least 80 families. *Id.* ¶ 34. Although Mamdani had asked her to find instances of child labor, Sharma testified that she found “no children [under the age of 14] who could stitch footballs.” *Id.* ¶ 35 (citing Sharma Tr. 181:06 – 10, 252:03 – 253:13 (HBO’s cross examination)). Sharma further testified that she reported her findings to Mamdani, with whom Sharma had been in daily contact during her survey. *Id.* ¶¶ 36 – 37 (citing Sharma Tr. 227:14 – 228:23). Contradicting Sharma’s sworn testimony, Mamdani’s purported notes of Sharma’s reports indicate that, in some of these families, children were found stitching Mitre balls. *Id.* ¶ 38. These notes also give the lie to COI’s core message that Mitre hires children instead of adults. The notes say that these children were helping their parents, attending school, or doing only “very basic stitching.” *Id.*

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<sup>4</sup> One of the earlier emails to which Kaur referred is a response to Mamdani’s April 9, 2008, email in which Mamdani identifies the kinds of things HBO is looking for. Kaur writes, “Meeting contractors is easy but they will never accept that they employ these children because they pay money to the family head for the balls stitched.” 56.1 Stmt ¶ 31.

Perskie testified that Manpreet Kaur's repeated admonition to HBO—that the parents make their own children stitch—was accurate and in accord with his research and understanding, yet he admitted that COI in no “way, shape or form” conveyed that truth:

I do take it to mean that that is very often the case and based on my interpretation of that, I have no reason to doubt that that was, in fact, how she felt and is largely based on the research and understanding that I have, accurate.

Q. . . . Is there any part of Children of Industry that you could point me to which discloses this information, that the problem is that adults are employed stitching soccer balls in their homes and then they give the soccer balls to their kids to do some stitching as well. Is there anything, that you recall, in Children of Industry that survived to the distribution which in any way, shape or form conveys that information which you just testified you thought was substantially true?

MR. METCALF: Objection. He didn't say substantially true, but you can answer the question.

A No.

[56.1 Stmt ¶ 40 (citing Perskie 30(b)(6) Tr. 141:20 – 143:05).]

“Real Sports” host Bryant Gumbel also testified that HBO had this information but omitted it from COI:

Q. . . . My question is in relation to all of this, had you heard any of this prior to the first distribution, the people collecting the information for HBO on the ground in India were telling HBO that . . . they found that, in fact, the way that soccer balls got to children was by the contractors and manufacturers giving the balls to adults to stitch and then the parents giving the balls to children to stitch; had you heard any of this prior to the first distribution?

MR. METCALF: Objection to form. Go ahead.

THE WITNESS: Yes.

[56.1 Stmt ¶ 41 (citing Gumbel Tr. 130:19 – 132:04).]

Q. . . . Where, if anyplace, in Children of Industry is it -- is the information that it is sometimes, often or always the case that kids



get the balls from adults, from their parents? Is there anyplace where HBO tells that story?

A. Where they get it from subcontractors, yes.

Q. No, I said from parents.

A. Parents, no.

[*Id.* ¶ 42 (citing Gumbel Tr. 138:17 – 24).]<sup>5</sup>

Indeed, HBO internally questioned the accuracy of the show. An annotated script for the show raises the question, “AGAIN ARENT [sic] THESE THE ACTIVITIES HERE A PRODUCT OF INDIAN SOCIETY, NOT NECESSARILY AN EVIL SOCCER BALL COMPANY LOOKING FOR BALLS ON THE CHEAP?” 56.1 Stmt ¶ 44. Bernard Goldberg, in his comments on a draft script to Perskie, writes, “JOE: I THINK THIS IS UNFAIR TO WAL MART AND MITRE.” *Id.* ¶ 45. Goldberg was unable to recall specifically why he said the show was “unfair” to Wal-Mart and Mitre nor whether anything was done to address that unfairness. *Id.* ¶ 46.

The depths of COI’s falsity extended to fabricating reasons why soccer ball makers like Mitre and their manufacturers “like hiring children.” The show states that soccer ball makers like hiring children because “children are the cheapest source of labor,” cannot strike, and cannot unionize—whereas adults can. Kapoor Decl. Ex. 4 at 5:16 – 6:04. There are no adult stitcher unions in Jalandhar. 56.1 Stmt ¶ 47. Perskie, who was ultimately responsible for the show’s accuracy, did not recall any evidence that soccer ball stitchers in India are unionized nor any evidence that they have ever gone on strike. *Id.* ¶¶ 48 – 49 (citing Perskie Tr. 15:20 – 17:13, 99:04 – 100:18).

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<sup>5</sup> According to a former SGFI monitor and stitcher, parents’ common reasons for allowing or requiring their children to stitch soccer balls include economic necessity, keeping the children out of trouble, as a disciplinary measure for disobedience, and/or because the some of the children do not go to school. Kapoor Decl. Ex. 19 at 55:24 – 56:12 (M.K. Hans transcript).

It is also a fact that soccer ball stitchers in India are all paid per piece stitched, not per hour nor per day as repeatedly stated in COI. 56.1 Stmt ¶ 50 (citing Satyarthi Tr. 130:15 – 24). In other words, it costs a manufacturer the same whether a child or an adult stitched the ball. Children therefore are not “the cheapest source of labor” and there is no economic incentive to “hir[e] children instead of their parents.” So HBO fabricated the information in COI that children are paid “pennies an hour.” Perskie testified: “I don’t know that we had any evidence one way or another that children were paid other than on a per ball or per piece rate.” *Id.* ¶ 51 (citing Perskie Tr. 42:20 – 43:02).

The falsity of COI is further demonstrated by the way HBO cut-and-pasted Satyarthi’s interview into the show. Satyarthi is the proffered expert on child labor, who the show states is someone “who has spent thirty years in his country’s slums working to break a custom that in these villages goes back ages: the use of poor children as manual labor.” Kapoor Decl. Ex. 4 at 3:25 – 4:10. COI then shows what Satyarthi is apparently talking about: “Jalandhar, India, a city built on the soccer trade, where a handful of local suppliers make balls for some of the biggest brands in the world.” *Id.* at 4:23 – 5:01.

Satyarthi, however, was describing the city of Meerut, India, where no Mitre balls are made and where HBO admits that it found no Mitre products of any kind being manufactured with either child labor or child slave labor. Kapoor Decl. Ex. 45 at 31. Regarding Jalandhar, Satyarthi testified that he “was not even aware that this film is being also filmed in [Jalandhar],” has “no idea of what is exactly happening” in Jalandhar, and he has “never been to Jalandhar in this particular or in any investigation with anyone. . . . And I had no idea, I have never seen that any child in Jalandhar is working for a particular company.” 56.1 Stmt ¶ 18 (citing Satyarthi Tr. 60:03 – 05, 104:17 – 105:16, 116:19 – 23, 223:20 – 224:10). About Mitre, Satyarthi repeatedly

testified how he was “shocked” at seeing children stitching Mitre soccer balls when he saw COI because of his respect for Mitre as a company with “strong systems to make sure that child labor is not used ” and “one of the leading” organizations in the field of corporate social responsibility. *Id.* ¶ 24 (citing Satyarthi Tr. 223:20 – 224:10, 252:14 – 256:06, 262:06 – 267:21).

**2. HBO Knew That Mitre and Its Manufacturers Were Aware of Child Labor in Soccer Ball Manufacture in India, Why It Occurred, and That Mitre and Its Manufacturers Work to Stop It**

Mitre and its manufacturers have never denied “on paper” the existence of child labor. To the contrary, they work to address it through an organization in Jalandhar founded for this purpose: the Sports Goods Foundation of India, or “SGFI.” Mitre told HBO this, although HBO had already learned of SGFI and of SGFI’s success in addressing child labor through HBO’s own prior research. Yet HBO removed mention of SGFI after initially considering it for COI.

In mid-August 2008, approximately one month before COI was first telecast, Perskie contacted Mitre by email concerning the show. Mitre’s Duncan Anderson responded to Perskie “on paper” that “[f]rom time to time, there are reports of children involved in stitching and we take these very seriously. It is important to immediately find out any detailed information possible so we can— . . . initiate any actions to remedy the situation . . . .” 56.1 Stmt ¶ 53. Anderson also referred to industry monitoring and remediation programs, which are those run by SGFI. In July 2008, SGFI’s members were 31 manufacturers, including the two manufacturers of hand-stitched Mitre soccer balls, Soccer International and Mayor & Co. *Id.* ¶ 54.

By the time of Anderson’s August 2008 email to Perskie, HBO already knew the details of SGFI’s work. Perskie’s July 5, 2008, “India Notes.doc” file contains his “To Do” list for COI. 56.1 Stmt ¶ 55 (citing HBO002278 – 86). Perskie’s “To Do” list includes, among **“IMAGES NEEDED (ARCHIVAL)”**: **“SGFI - doc and/or interviews/statements about success in eliminating child labor.”** *Id.* (citing HBO002282).

On or before July 9, 2008, Mamdani spoke to Ravi Purewal, Project Director of SGFI, and Purewal subsequently answered Mamdani's questions about SGFI in writing. 56.1 Stmt ¶ 56. Mamdani emailed Purewal a set of questions asking about the plans implemented to eliminate child labor in soccer ball stitching and whether they were working, and about the roles of "the big brands," "the india-based [sic] manufacturers," and SGFI. *Id.* ¶ 57. Purewal responded by email that: (1) SGFI was "created [in 1998] to identify and rehabilitate child labor in the sporting goods industry"; (2) SGFI's programs were working; and (3) "[i]t is a collective approach between the brands, manufacturers, community, local government, leaders & SGFI." *Id.* ¶ 58. Purewal also attached to his email "a few files about SGFI" that supplied the details of these policies and programs. *Id.* ¶ 59. Mamdani testified that she reviewed the SGFI documents Purewal sent her. *Id.* ¶ 60. They exchanged 24 emails in total from July – August 2008.

One document Purewal provided Mamdani is entitled "About Sports Goods Foundation of India (SGFI)," and states that SGFI is an "organisation committed to the prevention and rehabilitation of child labour in the sporting goods industry" whose members represent approximately 95 percent of the total Indian exports of "footballs." *Id.* ¶ 61. It notes that SGFI has partnered with the Indian federal government, the United Nations organizations UNICEF and UNIDO, FIFA, and other international organizations to achieve its foundational objective of preventing and rehabilitating child labor. *Id.* ¶ 62. In addition to active monitoring of stitchers in and around Jalandhar, the document describes how SGFI runs eight National Child Labour Project ("NCLP") schools funded by the Indian federal government and how SGFI also founded and operates "30 free [after school] tuition centers for rehabilitating children who were previously involved in labour activities." *Id.* ¶ 63. The NCLP schools run by SGFI provide mid-day meals, books, a monthly stipend for each student, uniforms, medical check-ups, and

vocational training. *Id.* ¶ 64. SGFI also provides adult education services, including training on stitching machines for the transition from hand- to machine-stitched balls, and is helping families with microfinancing to avoid the need to incur high-interest debt. *Id.* ¶ 65. Purewal's testimony in India confirmed the details of SGFI's work and his extensive communication with Mamdani about them. *Id.* ¶ 66.

To place children found stitching in schools, SGFI maintains a database created by SGFI's manufacturer members informing SGFI of every location where each manufacturer's balls are hand-stitched. *Id.* ¶ 67.<sup>6</sup> For each location, SGFI assigns a number and records names and ages of each resident and whether they are stitchers. *Id.* ¶ 69. SGFI monitors affix a metal plate to each registered location. *Id.* ¶ 70. When SGFI monitors find stitching in an unregistered location, SGFI informs the manufacturer and the manufacturer's internal monitoring team investigates how that location received soccer ball materials to stitch and registers that location with SGFI. *Id.* ¶ 71.

The information provided to Mamdani by Purewal included the fact that, as of July 2008, SGFI had "over 3300 families under close watch covering over 15,000 stitchers." *Id.* ¶ 72. SGFI monitors conduct random, unannounced inspections of each family/location at least four times per year. *Id.* ¶ 73. When a child under 14 is found stitching, SGFI confirms the age of the child and whether the child is going to school. *Id.* ¶ 74. If the child is under 14, SGFI informs the manufacturer, and the manufacturer issues the first warning to the contractor who supplied the material to the family. *Id.* ¶ 75.

If the child has not been attending school, SGFI's education coordinator counsels the family that the child should be going to school and helps the family enroll the child in an NCLP

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<sup>6</sup> SGFI also monitors factories and stitching centers, which account for only 1% of soccer ball stitching activity. 56.1 Stmt ¶ 68.

school managed by SGFI. *Id.* ¶ 76. SGFI also increases monitoring of that location to as many as 12 unannounced inspections per year. *Id.* The manufacturer's internal monitoring may increase its inspections to as frequently as daily. *Id.* If the adults in the family are recidivists, the manufacturer is required to delist that location. *Id.* ¶ 77. If the contractor continues to use that location or unregistered stitchers, the contractor is also delisted. *Id.* ¶ 78.

Mamdani testified that she "gave all [her] research and notes . . . to Joe [Perskie]" and communicated to him "what [she] learned about SGFI through the e-mail exchange with Mr. Purewal and the documents that Mr. Purewal provided [her] about SGFI and its work." *Id.* ¶ 79 (citing Mamdani Tr. 280:02 – 12, 525:17 – 23). Perskie confirmed that he "certainly" "did due diligence type of research on what SGFI is," and that SGFI "was established at some point within the last ten years to monitor and combat the use of children in the Indian soccer ball stitching industry." *Id.* ¶ 80 (citing Perskie 30(b)(6) Tr. 143:13 – 144:19).

HBO also knew that SGFI's work was effective. Charlotte Ponticelli, the Deputy Undersecretary for the Department of Labor interviewed by Bernard Goldberg and featured in COI, told Goldberg during her interview that the very kinds of activities in which SGFI engaged—identification of the children and where they are working, providing them with educational opportunities and vocational training, and generating community awareness and attitudinal change—form precisely the "comprehensive toolbox" that the Department of Labor uses "to tackle these problems." *Id.* ¶ 81 (citing Ponticelli Tr. 69:06 – 70:20, 73:14 – 85:04). Ponticelli told Goldberg during the interview that such policies and practices are "necessary" and "critical" in addressing child labor. *Id.* ¶ 82. She further told Goldberg that these policies and practices had met with significant success in *stopping parents from making their children work*. *See id.* ¶ 83.

HBO, however, doctored the Ponticelli interview shown in COI to hide these facts.

MR. GOLDBERG: But here's the part I don't understand.  
The Indian government has a policy against it.

MS. PONTICELLI: Right.

MR. GOLDBERG: The sporting good company has a policy against this. The U.S. government has a policy against letting this come into the country. The stores that sell this have a policy against it.

PONTICELLI: Right.

MR. GOLDBERG: And, and the one thing they all have in common is, they all say 'we didn't know.'

MS. PONTICELLI: Look, it's our responsibility. All of us have a role to play. But, you know, you could go around and say 'how do you let this happen.' When you find out it's happening, you work to address it.

Kapoor Decl. Ex. 4 at 17:25 – 19:03. The raw footage of Ponticelli's interview shows that HBO cut the video shown in COI after Ponticelli said "Look" above. Ponticelli's actual response to Goldberg was, "Look, policies -- policies and law are not only good, they're essential. They're necessary and they're critical." 56.1 Stmt ¶ 84 (citing HBO DVD 017 at 17:30 – 18:06 (raw footage of Ponticelli interview)). Ponticelli confirmed in her deposition that "it was clear" that HBO had "edited [her] responses to Mr. Goldberg's questions to delete most of [her] answers and remove the part of the answer that HBO apparently didn't want." *Id.* ¶ 85 (citing Ponticelli Tr. 98:04 – 102:07).

HBO thus falsely represented Ponticelli's response to be an affirmation of Goldberg's statement, "they all say 'we didn't know,'" by doctoring Ponticelli's response to state, "Look, it's our responsibility" and " 'how do you let this happen.'" In truth, however, Ponticelli refuted Goldberg's statement by informing him how company and governmental policies in combating child labor are "necessary" and "critical."

**3. HBO Did Not Find Children Stitching Mitre Soccer Balls in India; Rather, HBO Fabricated Those Scenes in “Children of Industry”**

COI repeatedly states how easy it was for HBO to find child labor, as “proof” that Mitre’s policies against child labor are false and that, if soccer ball companies really wanted to stop child labor, they could. *See* pp. 6, 9-10, *supra*. For this point, COI features Manjeet:

But law or no law, policy or no policy, the children are here, hidden in plain sight. Manjeet is an orphan who lives with her grandparents. She’s also a full-time soccer ball stitcher, and she’s only twelve.

MANJEET: I have no choice but to work. I can’t go to school. I have to work because my grandparents are very old and we are very poor.

Kapoor Decl. Ex. 4 at 5:06 – 15. After describing the physical and mental suffering imposed on children by their employers, *id.* at 5:16 – 7:08, COI shows Manjeet stitching a purported Mitre soccer ball and states:

MR. GOLDBERG: . . . Manjeet is making a ball for Mitre, one of the biggest soccer brands in the world, the preferred brand of the pros [showing archival video footage of David Beckham scoring a goal].

Mitre, which is based in London, has been the exclusive ball of the most prestigious league in the world, the English Premier League, as well as America’s pro league, Major League Soccer.

And Mitre is an industry leader off the field, too. In the 1990s, after widespread child labor was uncovered in Pakistan’s soccer ball industry, Mitre called a summit of the world’s biggest soccer ball makers, and they all pledged to stop using child labor.

*Id.* at 7:09 – 8:04; HBO DVD 109 at 6:46 – 8:10.

Manjeet’s testimony was taken in India. She testified under oath that she was told she would receive money to pretend on camera that she stitched Mitre soccer balls:

They asked whether anybody stitches in your house. I said no. They asked me to show how to stitch. Even if you don’t know to



stitch, you just hold it and sit, and we'll get money assigned to you from the Government. And they had brought a football with them, yes.

...

I told them there's nobody in the house. They said no, we have to make the video, and we'll get money assigned to you. They said there was nothing to worry about.

56.1 Stmt ¶ 86 (citing Manjeet Kaur Tr. 33:21 – 34:03, 38:01 – 04, 37:05 – 38:10 (testifying that she was in fact paid 100 Rupees)). In fact, Manjeet's guardians are her aunt and uncle, not her "very old" grandparents, and they have jobs. *Id.* ¶ 87. Contrary to COI, Manjeet was not forced to work and forego her education; she failed in her schooling and so instead chose to help with her aunt's tailoring business. *Id.* ¶ 88.

COI also identifies two brothers, Deepu and Aman, as Mitre soccer ball stitchers. Both brothers testified that they had never stitched a soccer ball and that they were also induced to pretend on camera that they were soccer ball stitchers:

They had asked us whether we stitch footballs. We said no. They give us two dakkars [soccer ball panels]. They said we just have to do shooting. You join them and pass a needle from this side and another from that side and stitch them, and then she said that the way you stitch these, you carry on stitching like that. But we did not know how to stitch footballs, and we never used to stitch. But she said the way you stitch these, it's done same way, and you will be video-recorded. [56.1 Stmt ¶ 89 (citing D. Singh Tr. 19:21 – 20:06).]

We told them that we do not know how to stitch footballs, so they should not get this well done from us. They just said that it's ok, you just try to pass a needle through, and it's okay, and we will take care of it. [56.1 Stmt ¶ 90 (citing A. Singh Tr. 30:08 – 12).]

In fact, Deepu attends school full time (8:00 a.m. – 3:00 p.m.), followed by after-school tuitions from 4:00 p.m. to 7:00 p.m. 56.1 Stmt ¶ 91. At the time of his deposition in 2010, he had been attending school full-time since 2004. *Id.* ¶ 92. Aman also attends school full-time. *Id.* ¶ 93.

Both brothers testified that they were induced to participate in the filming by the promise that the film would be used to obtain higher pay for adult soccer ball stitchers. *Id.* ¶ 94. HBO's stringer, Harinder Singh, corroborated the boys' account and testified that the filming of Deepu and Aman had been "fabricated" and "dramatized," *i.e.*, "that that thing was not actually taking place." *Id.* ¶¶ 95 – 96 (citing H. Singh Tr. 157:04 – 160:02, 171:03 – 23).

Lekh Raj, an SGFI monitor and former soccer ball stitcher, further corroborated that these scenes were staged. He testified that the scenes depicted in COI and in HBO's raw footage did not show real stitching nor real stitchers because: the children's hands bore no cut-marks nor calluses; the children were not sitting as soccer ball stitchers would sit; and the scenes did not contain the materials and implements required for stitching. *Id.* ¶ 97. Vikas Gupta of Soccer International, who is a founding officer of SGFI, testified that the holes in the soccer ball panels were too big, indicating that the panels had already had needle-and-thread passed through them. In other words, the panels came from completed balls that had been taken apart, and the bigger holes made the panels easy to stitch for those who are not soccer ball stitchers. *Id.* ¶ 98.

These images of children stitching Mitre balls had a powerful effect on viewers. Mitre responded to some of the emails it received from viewers, telling them that Mitre's investigation had revealed that the children depicted in COI were not involved in stitching Mitre balls. Viewers refused to believe Mitre, angrily replying: "I am sorry but we don't believe you. Your company logo was clearly visible. . . . A picture is worth a thousand words."; and "Come on Mitre, she was sitting there in full view stitching one of your balls!" *Id.* ¶¶ 99 – 100.

HBO knew that the scenes of Manjeet, Deepu, and Aman had been staged. Mamdani testified that she had seen the entirety of the raw footage filmed for COI and that she speaks Hindi. *Id.* ¶ 101. She further testified about a scene shown during her deposition, in which she

understood that the cameraman, Vijay Bedi, instructed an adult to show a child how to stitch. *Id.* ¶ 102 (citing Mamdani Tr. 269:10 – 20). Translations of the raw footage of Manjeet, Deepu, and Aman similarly show the cameraman and an unidentified woman directing the children what to do and what to say. *Id.* ¶¶ 103 – 106. Mamdani’s notes of her May 2008 trip to India describe how the children should “keep mentioning the brand,” “Mitre.” *Id.* ¶ 104 (citing HBO008774). Aman (short for “Amandeep”) is instructed by an unidentified woman as follows:

WOMAN: In one sentence can you say, “I make Mitre footballs and I am 9 years old?”

AMANDEEP: I make Mitre footballs and my ...

WOMAN: Am 9 years old.

AMANDEEP: and I am 9 years old.

WOMAN: Can you say it again?

AMANDEEP: I make Mitre footballs and I am 9 years old.

*Id.* ¶ 105. Similarly, Deepu (a nickname for Deepak) is instructed:

WOMAN: Can you tell the name of the football ... I stitch Mitre footballs.

DEEPAK: I stitch Mitre footballs.

CAMERAMAN: Say it again.

DEEPAK: I stitch Mitre footballs. . . .

*Id.* ¶ 106. Deepu’s testimony confirms that he was told to say this, and that he kept telling the woman, “Madame, we do not stitch, we do not stitch.” *Id.* ¶ 107.

### ARGUMENT

The legal standards for summary judgment and the law governing Mitre's libel claim are set forth in this Court's order of December 14, 2010, at 1-2. Dkt Entry 179.<sup>7</sup> Further, the required level of fault depends on the court's classification of the plaintiff as either a private figure or a public figure. *See Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 176 (2d Cir. 2000). If the plaintiff is a public figure suing a media defendant, the First Amendment requires that the publication was made with "actual malice." *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964). "Actual malice" means "with knowledge that [the defamatory statement] was false or with reckless disregard of whether it was false or not." *Id.* at 280; *accord Celle*, 209 F.3d at 183. Where the plaintiff is a private entity involved in a matter of legitimate public concern, the plaintiff must establish by a preponderance of the evidence that the publication was made in a "grossly irresponsible" manner without due regard for the standards of information gathering and dissemination ordinarily followed by responsible parties involving similar matters. *See Chapadeau v. Utica Observer-Dispatch*, 38 N.Y.2d 196, 199 (1975).

**A. "Children of Industry" Defamed Mitre by Stating That Mitre Employs Child Labor in the Manufacture of Soccer Balls in Jalandhar, India**

It is undisputed that the "intended readers," *i.e.*, viewers, of COI understood the show to mean that Mitre engaged in the criminal and damnable act of hiring children as laborers to exploit them for profit as a cheap source of labor. 56.1 Stmt ¶¶ 4 – 17. Because the viewers' understanding controls the issue, Mitre is entitled to summary judgment on this element. *See* Order, at 2-3 (Dec. 13, 2010).

The viewers' understanding of the show was precisely the meaning HBO intended to convey and did convey. COI plainly states that Mitre, "an industry leader," "called a summit of

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<sup>7</sup> HBO admits in its Answer to Mitre's Complaint that COI was published, and the reactions of viewers demonstrate that the show was seen by third parties. 56.1 Stmt ¶¶ 1, 4 – 17.

the world's biggest soccer ball makers" in the 1990s and "they all pledged to stop using child labor." Kapoor Decl. Ex. 4 at 7:16 – 8:04. The implication of this statement is that Mitre intentionally employed child labor in the 1990s in Pakistan, as part of industry "custom" that "goes back ages," *id.* at 3:25 – 4:11.

The show states that—despite this "pledge[]" to stop using child labor," despite laws against the practice, and despite Mitre's "so-called" policies against child labor—it continues to exist, "hidden in plain sight." *Id.* at 4:23 – 5:08. Further, the show states that Mitre lies "on paper" and denies the existence of what is plain for all to see. *Id.* As proof of the ease with which child labor can be discovered and as proof of Mitre's false denials, COI uses Manjeet, "a full-time soccer ball stitcher" who is 12 years old, "making a ball for Mitre, one of the biggest soccer brands in the world, the preferred brand of the pros." *Id.* at 5:08 – 15, 7:09 – 8:04.

COI explains that Mitre and its manufacturers in India hire children because "[c]hildren are the cheapest source of labor. They are physically and mentally vulnerable. They cannot go on strike. They cannot form the unions. So they are docile, easy." *Id.* at 5:16 – 6:04.

#### **B. "Children of Industry" Was False—and HBO Knew It**

From its earliest research into child labor in India, in 2006, HBO knew that it was neither the brands nor the manufacturers "hiring" children. In a November 2006 document sketching the story that became COI, HBO stated that "these kids are not being beaten by their 'masters;' they're being slapped by their parents for not working . . ." 56.1 Stmt ¶ 27 (ellipsis in original). Through September 2008, HBO was consistently informed by its "very precise, very careful, very thorough" researcher Manpreet Kaur that parents and other adult family members make the children in the household stitch soccer balls. *Id.* ¶¶ 28 – 32. The Producer of COI, Joseph Perskie, confirmed the accuracy of Kaur's information based on his own research. *Id.* ¶ 40. The host, Bryant Gumbel, further admitted to knowledge of this fact. *Id.* ¶ 41.

Perskie and Gumbel also admitted that COI nowhere conveyed that the children's own parents give them balls to stitch, *id.* ¶¶ 40, 42, leaving viewers with the triply false understanding that Mitre hires children instead of adults, that Mitre likes doing so, and that Mitre likes doing so because children are cheap labor. These misrepresentations were intentional and for the purpose of conveying the core message of COI: "soccer ball makers in India like hiring children instead of their parents" because they are a cheap source of labor and more easily exploited than adults. Kapoor Decl. Ex. 4 at 5:16 – 6:04. Had HBO included the fact that soccer ball makers hire *adult stitchers* and some of them give their children balls to stitch at home, this core message of COI would have been destroyed. As HBO knew, the truth would have destroyed it. Indeed, HBO even fabricated the reasons why soccer ball makers "like hiring children instead of their parents": because children are cheaper and cannot strike nor unionize. *See id.* Because stitchers are paid per ball delivered by adult stitchers, not per hour, 56.1 Stmt ¶¶ 50 – 51, children are not cheaper. And there are no unions nor strikes of adult stitchers. *Id.* ¶ 47 – 49.

For the same reason that HBO hid from viewers the fact that parents—not Mitre nor Mitre's manufacturers—give children balls to stitch, HBO hid from viewers what Mitre and its manufacturers in India do to stop child labor. After considering mention of SGFI's work and "success in eliminating child labor," *id.* ¶ 55 (citing Kapoor Decl. Ex. 27 at HBO002282), and after learning the details of how SGFI did so and continued to do so, *id.* ¶¶ 56 – 67, 72, 79 – 80—HBO disregarded these facts in COI. HBO knew, from its interview with Ponticelli, that the kinds of programs SGFI had established were precisely the "necessary" and "critical" tools that the U.S. Department of Labor considered part of its "comprehensive toolbox" to address the problem of child labor. *Id.* ¶¶ 81, 82. And HBO knew from Ponticelli that these tools had been effective in changing the attitudes and behavior of parents. *Id.* ¶ 83. Yet HBO deleted from COI

what SGFI, Mitre's manufacturers, and the U.S. government did to stop child labor because that would destroy the show's core message that Mitre and its manufacturers like hiring children as cheap labor. This omission was intentional—*HBO doctored the interview shown in COI to delete facts contrary to that message.* 56.1 Stmt ¶¶ 84 – 85.

Finally, the children identified in COI as stitchers of Mitre soccer balls, Manjeet, Deepu, and Aman—all of whom HBO identified in its Rule 26(a) statement, at pp. 7-8, as individuals on whose testimony HBO intended to rely to prove “the substantial truth of the Segment”—gave un rebutted testimony that they were induced to pretend to stitch Mitre balls on-camera and that those scenes were staged. 56.1 Stmt ¶¶ 86 – 94. The children's testimony was corroborated by: (1) the testimony of HBO's stringer, Harinder Singh, who testified on HBO's examination that the scenes with Deepu and Aman had been “fabricated” and “dramatized,” *id.* ¶¶ 95 – 96; (2) the un rebutted testimony of an SGFI monitor and former soccer ball stitcher that the scenes did not depict real stitching, *id.* ¶ 97; and (3) un rebutted testimony that the balls shown being stitched had already been stitched prior to being given to the children in the show, *id.* ¶ 98.

HBO knew that these scenes had been staged, because the cameraman and an unidentified woman can be heard on the raw footage directing the children what to do and what to say—including directing the children to say that they “stitch Mitre footballs.” *Id.* ¶¶ 101 – 107. Mamdani testified that she viewed the entirety of the raw footage, that she speaks Hindi, and that she recognized another scene in which she heard the cameraman say about a child “stitcher,” “show him what to do.” *Id.* ¶¶ 101 – 102.

### **C. HBO Acted Grossly Irresponsibly in Producing “Children of Industry”**

In applying the gross irresponsibility standard of *Chapadeau v. Utica Observer-Dispatch*, 38 N.Y.2d 196, 199 (1975), courts frequently look to principles of professional journalism. *Greenberg v. CBS Inc.*, 69 A.D.2d 693, 710 (2d Dep't 1979). While expert reports concerning

the standards of professional journalism are not required on a motion for summary judgment, they are “welcome.” *Id.* And investigative reporting, such as COI, must satisfy even “more rigorous standards.” *Greenberg*, 69 A.D.2d at 710-11.

Further, whether a journalist acted grossly irresponsibly depends to some extent on the facts that the journalist falsely reported. *Compare Fitzgerald v. Herald Co.*, 119 A.D.2d 974 (4th Dep’t 1986) (holding that it could have been grossly irresponsible for a reporter, who drew erroneous conclusions from his observations at a DWI roadblock, not to have attempted to “verify the identity of the person arrested with any official source”) *with Chapadeau*, 38 N.Y.2d at 200 (not grossly irresponsible to fail to verify whether the person arrested was part of a group of two other individuals also arrested).

Mitre submitted an expert report—that HBO elected not to rebut with a report of its own—from Professor Patricia A. Aufderheide, University Professor in the School of Communication at American University. Kapoor Decl. Ex. 43 at 1 (Expert Report of Patricia A. Aufderheide, Ph.D.). Professor Aufderheide teaches documentary film history and practice, including professional standards in the practice of documentary filmmaking. *Id.* Professor Aufderheide was asked to provide her opinion “on any ethical issue which [she] believed was raised by the production of ‘Children of Industry’ and the resulting show itself.” *Id.* at 2.

HBO and Professor Aufderheide agree that COI is a journalistic or public affairs documentary program. 56.1 Stmt ¶¶ 108, 109. Such programs stake a “claim to accuracy, honesty, integrity, truthfulness, and significance. The public affairs documentary makes a claim to tell the public important things about the world, in a way that allows the receivers to make an informed judgment and decide how to act as responsible members of society.” Kapoor Decl. Ex.



43 at 2. Thus, public affairs documentary programs should have “extensive fact-checking . . . along with other stringent journalistic requirements.” *Id.* at 4.

HBO acted grossly irresponsibly because—far from extensive fact-checking—HBO published knowingly false statements in COI, fabricated information, and manipulated and edited footage to misrepresent facts. In addition to violating the “actual malice” standard, HBO’s actions violate established principles of professional journalism. *Id.* at 6-7.<sup>8</sup> According to Professor Aufderheide, herself a former journalist, COI “made damning claims, without proper verification and willfully ignoring contradictory and correct information.” *Id.* at 10; *see also id.* at 15-18 (fabrication and staging of scenes), 19-24 (misrepresentation of key facts), 24-27 (doctoring of Ponticelli and Satyarthi interviews), and 27-28 (misrepresentation of objectives to other parties).

Professor Aufderheide also notes that HBO’s and its stringers’ failure to verify the children’s ages and their failure to verify that the balls they claimed to have seen being stitched were genuine Mitre balls—not counterfeit balls—was a departure from ethical journalism. *Id.* at 28-29 (citing testimony collected at Kapoor Decl. Ex. 49). *See Fitzgerald, supra* (failure to attempt to “verify the identity of the person arrested with any official source” supports finding of gross irresponsibility). HBO’s own researcher, Harinder Singh, told HBO (Mamdani) to verify the ages of the children depicted in COI as child stitchers of Mitre soccer balls. 56.1 Stmt ¶ 113.

#### **D. “Children of Industry” Damaged Mitre**

HBO’s portrayal of Mitre as intentionally employing child labor in Jalandhar was defamatory *per se*, *i.e.*, defamatory on its face. “ ‘Where a statement impugns the basic integrity

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<sup>8</sup> Perskie testified that he was not aware of any “standards and procedures for producing news programming” at HBO. 56.1 Stmt ¶ 110. Rather, only he and Mamdani were responsible for fact-checking. *Id.* ¶¶ 110 – 112. But as their testimony shows, many assertions of fact were known to be false and/or had no basis.

or creditworthiness of a business, an action for defamation lies and injury is conclusively presumed.” *Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 180 (2d Cir. 2000) (quoting *Ruder & Finn Inc. v. Seaboard Surety Co.*, 422 N.E.2d 518, 522 (N.Y. 1981)). To say that COI “impugned the basic integrity” of Mitre, is understatement. HBO falsely accused Mitre of engaging in heinous, criminal, and damnable acts. Moreover, as HBO’s own damages expert admitted at his deposition, this kind of libel “would be of sufficiently material nature as to have an impact on sales.” 56.1 Stmt ¶ 114.


### **CONCLUSION**

For the foregoing reasons, Mitre respectfully requests partial summary judgment, pursuant to Federal Rule of Civil Procedure 56, that HBO defamed Mitre by falsely portraying that Mitre employs child labor in the manufacture of Mitre soccer balls in Jalandhar, India.

Dated: April 15, 2011

Respectfully submitted,

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